



COUNCIL AGENDA: 06-16-09
ITEM: 3.13

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Alex Gurza

SUBJECT: SEE BELOW

DATE: June 11, 2009

Approved

Christine J. Shippey

Date

6/12/09

SUBJECT: ORDINANCE TO AMEND THE MUNICIPAL CODE RELATED TO THE EFFECT OF ABSENCE DUE TO MANDATORY REDUCTION IN PAID WORKING TIME ON CONTRIBUTIONS TO THE RETIREMENT FUND AND CALCULATION OF RETIREMENT BENEFITS

COUNCIL DISTRICT: N/A
SNI AREA: N/A

RECOMMENDATION

Approval of an ordinance amending Chapter 3.28 of Title 3 of the San Jose Municipal Code to amend sections 3.28.030.11 and 3.28.680 and to add new sections 3.28.030.30 and 3.28.690 related to the effect of absence due to mandatory reduction in paid working time on contributions to the retirement fund and calculation of retirement benefits.

OUTCOME

Adoption of the ordinance amending Chapter 3.28 of Title 3 of the San Jose Municipal Code to amend sections 3.28.030.11 and 3.28.680 and to add new sections 3.28.030.30 and 3.28.690 related to the effect of absence due to mandatory reduction in paid working time on contributions to the retirement fund and calculation of retirement benefits.

BACKGROUND

The City of San Jose and the Association of Building, Mechanical and Electrical Inspectors (ABMEI) entered into an agreement approved by the City Council on June 9, 2009 related to a reduction in paid working time for Fiscal Year 2009-2010. As part of this agreement, it is the intent that both the City and the employees represented by ABMEI will continue to make contributions to the Retirement System for all paid hours and all regular hours that employees represented by ABMEI would have worked.

ANALYSIS

On June 9, 2009, the City Council approved an agreement between the City of San Jose and the Association of Building, Mechanical and Electrical Inspectors (ABMEI), which includes temporarily reducing the regular work week hours by 10% for all employees represented by ABMEI in Fiscal Year 2009-2010. Effective June 28, 2009, this shall result in employees receiving 10% less wages during Fiscal Year 2009-2010.

Currently, retirement contributions are paid by employees and the City at the established rates determined by the Federated City Employees' Retirement System's actuary, as a percentage of compensation earned or salary paid. During the term of this agreement, it is the intent that both the City and the employees represented by ABMEI will continue to make contributions to the Retirement System for all paid hours and all regular hours that employees represented by ABMEI would have worked, but did not as a result of this agreement, which equates to eight (8) hours per pay period. The Municipal Code needs to be amended to implement this agreement.

Under the Federated City Employees' Retirement System, plan members earn one year of service credit once they have earned 1,739 pensionable hours. Full-time employees typically have 2,080 pensionable hours per year, and both the City and employees make retirement contributions on all 2,080 hours. However, employees are currently not required to make retirement contributions for unpaid leave time; and they do not receive service credit for unpaid time off. Since the employees and the City will continue to make contributions in the Retirement System for all paid hours and all regular hours that employees represented by ABMEI would have worked, but did not as a result of this agreement, it is recommended that the Municipal Code be amended to require both the employees and the City to make retirement contributions for the unpaid time off and to provide that the employee continue to receive retirement service credit for the unpaid time off.

The monthly pension benefit for members of the Federated City Employees' Retirement System is based on their highest and second highest annual average "compensation earnable." Compensation earnable" is defined as the average compensation paid to the member "upon the basis of the average time put in by the member in the same group or class of employment and at the same rate of pay." Because all building inspectors will be subject to the mandatory reduced work week, their highest and second highest annual average compensation could be reduced, thereby reducing their monthly pension benefit. Since the employees will be paying their retirement contributions as if they were being paid, it is recommended that the Municipal Code be amended to provide that the mandatory time off will not impact the highest and second highest annual average compensation calculation.

In the event there are similar agreements with other employee units, the ordinance (attached) has been drafted to allow for these changes.

EVALUATION AND FOLLOW-UP

The Board of Administration of the Federated City Employees' Retirement System will continue to study the impact of mandatory unpaid time off on the Retirement Fund. In addition, we have asked the City Attorney's Office to research options for future amendments that may be considered for mandatory unpaid time off for employees not in a recognized employee organization.

PUBLIC OUTREACH/INTEREST



Criteria 1: Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**

June 11, 2009

Subject: Ordinance to amend the Municipal Code related to the effect of absence due to mandatory reduction in paid working time on contributions to the Retirement Fund and calculation of retirement benefits

Page 3 of 3



Criteria 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**



Criteria 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum will be posted on the City's website for the June 16, 2009 Council Agenda.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

COST IMPLICATIONS

The City and ABMEI will continue to make contributions to the Retirement System for all paid hours and all regular hours that employees represented by ABMEI would have worked, but did not as a result of the agreement, which equates to eight (8) hours per pay period. Therefore, there is no additional cost incurred as a result of this Agreement.



Alex Gurza
Director of Employee Relations

For questions please contact Alex Gurza, Director of Employee Relations, at (408) 535-8150.

Attachment

DRAFT

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
CHAPTER 3.28 OF TITLE 3 OF THE SAN JOSE
MUNICIPAL CODE TO AMEND SECTIONS 3.28.030.11
AND 3.28.680 AND TO ADD NEW SECTIONS 3.28.030.30
AND 3.28.690 RELATED TO THE EFFECT OF ABSENCE
DUE TO MANDATORY REDUCTION IN PAID WORKING
TIME ON CONTRIBUTIONS TO THE RETIREMENT FUND
AND CALCULATION OF RETIREMENT BENEFITS**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 3.28.030.11 of Chapter 15.14 of Title 15 of the San José
Municipal Code is amended to read as follows:

3.28.030.11 "Final Compensation"

- A. For a member who separated from City service prior to July 1, 2001, "final compensation" means the highest average annual compensation earnable by the member during any period of three (3) consecutive years of Federated City service, including time prior to entering federated City service at the compensation earnable by the member in the position first held by him or her in such service as may be necessary to complete three (3) consecutive years.
- B. For a member who separated from City service on or after July 1, 2001, "final compensation" means the highest average annual compensation earnable by the member during any period of twelve (12) consecutive months of Federated City service, including time prior to entering federated City service at the compensation earnable by the member in the position first held by him or her in such service as may be necessary to complete twelve (12) consecutive months; provided, however, that such final

compensation shall not exceed one hundred eight percent (108%) of the second-highest average annual compensation earnable by the member during any twelve (12) consecutive months, excluding all of the months used to determine the highest average annual compensation earnable; and provided further if the member has been subject to a mandatory reduction in paid working time, the calculation for compensation earnable shall include the compensation that would have been earnable had the member not been subject to a mandatory reduction in paid working time.

- C. For the purposes of this Chapter, periods of service separated by breaks in service may be aggregated to constitute a period of three (3) consecutive years or twelve (12) consecutive months, as applicable, if the periods of service are consecutive except for such breaks. If a break in service did not exceed six (6) months in duration, time included in the break and compensation earnable during such time shall be included in computation of final compensation. If a break in service exceeded six (6) months in duration, the first six (6) months thereof and the compensation earnable during those six (6) months shall be included in computation of final compensation, but time included in the break which is in excess of six (6) months and the compensation earnable during such excess time shall be excluded in computation of final compensation.

SECTION 2. Part 5 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended by adding a Section to be numbered, entitled, and to read as follows:

3.28.030.30 "Mandatory Reduction in Paid Working Time"

"Mandatory reduction in paid working time" shall mean any time period during which a member's paid working time is mandatorily reduced, as calculated on an annual basis, to less than two thousand eighty (2,080) hours, but not less than one thousand seven hundred thirty nine (1,739) hours, pursuant to an agreement with a recognized employee organization that represents the member.

SECTION 3. Section 3.28.680 of Chapter 15.14 of Title 15 of the San José Municipal Code is amended to read as follows:

3.28.680 Computation of Amount of Service

- A. Except as otherwise provided with respect to absence on military service and as otherwise provided in Section 3.28.685 and 3.28.690, time during which a member is absent from Federated City service without compensation shall not be allowed in computing Federated City service.
- B. The Retirement Board shall credit a member with one (1) year of Federated City service for one thousand seven hundred thirty-nine (1,739) or more hours of Federated City service rendered by the member in any calendar year. Credit for more than one (1) year of such service shall not be allowed for service rendered in any calendar year.
- C. If a member renders less than one thousand seven hundred thirty-nine (1,739) hours of federated City service in a calendar year, as in the case of part-time service, the member shall be given credit for that proportion of one (1) year which the hours of Federated City service rendered by the member in such year bear to one thousand seven hundred thirty-nine (1,739) hours.
- D. Notwithstanding subsections B. and C. above, the Retirement Board shall credit a member with one (1) year of Federated service credit for each two thousand eighty (2,080) or more hours of eligible prior service purchased by a member pursuant to Part 22. A member shall be given credit for any purchased eligible prior service that is less than two thousand eighty (2,080) hours in the same proportion of one (1) year which the hours of purchased eligible prior service bears to two thousand eighty (2,080) hours.

SECTION 4. Part 5 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended by adding a Section to be numbered, entitled, and to read as follows:

3.28.690 Absence Without Compensation During Periods of Mandatory Reduction in Paid Working Time

- A. Time during which a member was absent without compensation because the member is subject to a mandatory reduction in paid working time shall constitute "Federated City service" in any case where all of the following requirements are satisfied:
1. The member was on leave of absence without compensation because of the mandatory reduction in paid working time and not for any other reason.
 2. With respect to any member who rendered fewer than one thousand seven hundred thirty-nine (1,739) hours of Federated City service in the calendar year in which the mandatory reduction in paid working time is in effect, the City and member have paid into the retirement fund the contributions that would have been made to the fund by both the City and the member if the member had not been absent without compensation during the mandatory reduction in paid working time.
- B. The City and the member shall make their respective contributions to the retirement fund as if the member had not been absent without compensation during the mandatory reduction in paid working time.

PASSED FOR PUBLICATION of title this _____ day of _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk